Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-767

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO AND CLC, LOCAL UNION NO. 1805,

Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION, AEROSPACE DIVISION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR WESTINGHOUSE ELECTRIC CORPORATION, AEROSPACE DIVISION, IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court, (Pet. App. 1-10a) is unreported. The opinion of the Court of Appeals is not yet reported (Pet. App. 11-16a).

JURISDICTION

The judgment of the Court of Appeals was entered on August 23, 1977. The Petition for Writ of Certiorari was

filed on November 23, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the Court of Appeals properly concluded that the arbitrator's award constituted an award of punitive damages contrary to well-established law.

STATUTE INVOLVED

29 U.S.C. § 185(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

This case arose out of a labor agreement which required Westinghouse Electric Corporation (hereinafter called Company) to negotiate the *time* of a vacation shutdown. The sole issue submitted to the arbitrator was whether the Company had failed to negotiate the *time* of the shutdown. The arbitrator, however, held that because of the "numerous questions" raised by a vacation shutdown, the Company had not allowed sufficient opportunity for negotiations. He then awarded three additional days of paid vacation to each employee — amounting to approximately $250,000 — even though there was *no* evidence that *any* employee had been damaged by the Company's action.

The District Court found that the arbitrator had ignored the clear and unambiguous language of the

contract which limited the matter to be negotiated by the Company with the Union to the time of the vacation shutdown. The Court also determined that the arbitrator's award went beyond the scope of the issue submitted to him. The Court further found that the arbitrator's award of damages was improper because it bore no relationship to any demonstrable loss and constituted an improper award of punitive damages. The Court granted the Company's motion for summary judgment on these grounds (Pet. App. 1a-10a). The Court did not disturb the arbitrator's finding of fact that the 37 days allowed by the Company to negotiate the vacation shutdown was too short a time.

The Court of Appeals affirmed the District Court's decision in its entirety (Pet. App. 11a-15a). The Court, in its decision, noted the various grounds relied upon by the District Court in its granting of summary judgment to the Company. The Court, however, only addressed itself to the question of damages and agreed with the finding of the District Court that the arbitrator's award was punitive and improper. The other grounds relied upon in the District Court's decision were not disturbed.

ARGUMENT

Initially, it must be noted that Petitioner is incorrect in contending that the Court of Appeals rejected the District Court's reasoning except with regard to the question of damages (Pet. 5-6). The Appellate Court in no way disturbed the findings by the District Court that the arbitrator ignored the clear and unambiguous language of the contract in making his decision and that he exceeded the scope of the submission. The Court of Appeals simply found that the damages question by itself was a sufficient basis for affirming the District Court's judgment.

The Petitioner, in the Question Presented portion of its Petition, is also incorrect in representing this case to be one where an arbitrator "properly finds a breach of the collective bargaining agreement by the employer." The District Court merely stated that it would not disturb the arbitrator's *finding of fact* that 37 days was too short a period to allow for negotiations (Pet. App. 8a). With respect to the *question of law*, however, the District Court found that the arbitrator "ignored the plain and unambiguous language of the contract" (Pet. App. 7a). Therefore, it cannot be said that either Court below held that the arbitrator in this case *properly* found a breach of the agreement which would subject the Company to *any* liability.

There is also no merit in the petitioner's contention that the "Circuit Courts of Appeal have developed conflicting views concerning the breadth of judicially enforceable arbitration remedies (*infra*, p. 5a)" (Pet. 7). At page 5a the District Court was discussing the role of a Court when reviewing an arbitrator's award concerning the *merits* of a grievance; the District Court noted that the Courts of Appeals were not unanimous on this question. The District Court, however, was *not* discussing in any way the issue of *remedies*.

In fact, it is hornbook law that in a case involving an alleged breach of contract, there can be no award of punitive damages in the absence of willful or wanton conduct. In all of the reported Section 301 cases on this subject, the federal courts have uniformly applied this principle. See *United Shoe Workers v. Brooks Shoe Mfg. Co.*, 298 F.2d 277 (3rd Cir. 1962); *Int'l Union of Operating Engineers Local No. 450 v. Mid-Valley, Inc.*, 347 F. Supp. 1104 (S.C. Tex. 1972); and *Sidney Wanzer & Sons, Inc. v. Milk Drivers Union Local 753, Int'l Brotherhood of Teamsters*, 249 F. Supp. 664 (E.D. Ill. 1966).

This principle has also been universally followed by labor arbitrators. The Circuit Court, in its opinion, noted several arbitration decisions concerning vacation shutdowns which held that where no monetary loss was suffered, an award of damages would be punitive in nature and improper. The opinion also cites two leading arbitration treatises for the proposition that absent willful or wanton conduct, arbitrators should not award punitive damages. (Pet. App. 13a-14a). The Circuit Court went on to state that it was well established that such arbitration principles are a part of the "industrial common law" and thus become a part of the collective bargaining agreement. This Court, in *United Steelworkers v. Warrior Gulf Navigation Co.*, 363 U.S. 574 (1960), established that concept almost two decades ago.

Thus, it is clear that the Circuit Court in the instant case only had to apply a well-settled principle of law to the facts in the record before it. The District Court found that "there was no showing or finding of malice, illwill or wanton violation of the agreement." (Pet. App. 10a). The Circuit Court stated that "the Union makes no claim that the Company's conduct was willful or wanton." (Pet. App. 14a). Since every employee received his full number of vacation days, the District Court found that "there was no loss for which the employees or the Union could be compensated." (Pet. App. 92), and the Circuit Court similarly stated that "none of these employees suffered any monetary loss." (Pet. App. 9a). Based upon these findings, the only logical conclusion is that the arbitrator improperly awarded punitive damages, which is precisely what both courts below held.

Petitioner's extensive reliance on *Safeway Stores v. Bakery Workers Local 111*, 390 F.2d 79 (5th Cir. 1968), is misplaced. The employer in that case never raised the issue of whether the award of the arbitrator was

punitive and the Court never addressed itself to that question. The sole question involved was whether under the collective bargaining agreement of the parties, employees were *guaranteed* that they would receive forty hours pay during each pay period. The Court merely affirmed the arbitrator's award which found that the agreement did so provide.

CONCLUSION

The Court of Appeals below affirmed on the issue of punitive damages without disturbing any other findings of the District Court. There has been no judicial finding that the Company committed a breach of contract which would subject it to liability. This case has been decided under well-settled principles of law and does not raise any novel question which requires consideration by this Court. Therefore, the Petition of Certiorari should be denied.

Respectfully submitted,

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